

1 HARVEY C. BERGER, Bar No. 102973  
 2 berger@popeberger.com  
 3 POPE, BERGER & WILLIAMS  
 A Professional Corporation  
 4 550 West C Street, Suite 1400  
 San Diego, CA 92101  
 Telephone: (619) 595-1366

5 Attorneys for Plaintiff  
 6 BRIAN HOUGH  
 7 VAN A. GOODWIN, Bar No. 095170  
 vgoodwin@littler.com  
 8 O. MISHELL P. TAYLOR, Bar No. 256850  
 mtaylor@littler.com  
 9 LITTLER MENDELSON  
 A Professional Corporation  
 10 501 W. Broadway, Suite 900  
 San Diego, CA 92101-3577  
 Telephone: (619) 232-0441

11 Attorneys for Defendant  
 12 AEROTEK, INC.

13 WENDY M. LAZERSON, Bar No. 97285  
 wendy.lazerson@bingham.com  
 14 BINGHAM MCCUTCHEN LLP  
 1900 University Avenue, 4th Floor  
 15 East Palo Alto, CA 94303-2223  
 Telephone: (650) 849-4840

16 Attorneys for Defendant  
 17 GENERAL MOTORS CORPORATION

18 UNITED STATES DISTRICT COURT

19 SOUTHERN DISTRICT OF CALIFORNIA

20 BRIAN HOUGH, individually and on  
 21 behalf of all other similarly situated current  
 and former employees of Defendants in the  
 22 State of California,

Case No. 08 CV 1076 W (CAB)

23 Plaintiff,  
 24 v.  
 25 AEROTEK, INC., a Maryland  
 Corporation; GENERAL MOTORS  
 26 CORPORATION, a Delaware Corporation;  
 and DOES 1 through 100, inclusive,  
 27  
 28 Defendants.

**JOINT RULE 26(f) REPORT**

Complaint Filed: May 8, 2008

Date: September 25, 2008  
 Time: 9:00 a.m. (Telephonic)  
 Judge: Hon. Cathy Ann Bencivengo

1 TO THIS HONORABLE COURT AND TO ALL PARTIES AND THEIR RESPECTIVE  
 2 ATTORNEYS OF RECORD:

3 COME NOW Plaintiff BRIAN HOUGH (hereinafter "Plaintiff" or "HOUGH") and  
 4 Defendants AEROTEK, INC. (hereinafter "AEROTEK") and GENERAL MOTORS  
 5 CORPORATION (hereinafter "GM"), who submit this Joint Rule 26 Report in the above-captioned  
 6 action pursuant to the Rule 26(f) of the Federal Rules of Civil Procedure.

7 As required by the Order Following Early Neutral Evaluation Conference issued by United  
 8 States Magistrate Judge Bencivengo on August 6, 2008, counsel for the parties conducted a Rule  
 9 26(f) conference via telephone on Thursday, August 21, 2008. The participants were: Harvey C.  
 10 Berger, counsel for Plaintiff; Van A. Goodwin, counsel for Defendant AEROTEK; and Wendy M.  
 11 Lazerson, counsel for Defendant GM.

12

13           **I. MODIFICATIONS TO THE REQUIREMENTS  
                 FOR DISCLOSURES UNDER FRCP 26(A)**

14 The parties propose to extend the date set forth in the Order Following Early Neutral  
 15 Evaluation Conference for the exchange of initial disclosures pursuant to Rule 26(a)(1)(A-D) by two  
 16 weeks due to the fact that counsel for Plaintiff was scheduled to be in trial, which was not expected  
 17 to be completed by September 11, 2008. The parties propose to exchange their initial disclosure of  
 18 information required by Rule 26(a)(1) on or before September 25, 2008.

19           **II. BRIEF DESCRIPTION OF KEY LEGAL ISSUES**

20 Plaintiff has alleged causes of action for overtime compensation, reimbursement of business  
 21 expenses under California Labor Code section 2802 and violation of Labor Code sections 221 and  
 22 450, and unfair business practices under California Business & Professions Code section 17200  
 23 arising out of his alleged employment by Defendants. Defendants dispute all such claims and  
 24 disclaim any liability and responsibility for any damages purportedly suffered by Plaintiff.

25       ///  
 26       ///  
 27       ///

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1                   **III. LIKELIHOOD OF MOTIONS SEEKING TO ADD OTHER PARTIES**  
 2                   **OR CLAIMS, FILE AMENDED PLEADINGS OR TRANSFER VENUE**

3                   As suggested at the Early Neutral Evaluation Conference, Plaintiff has submitted a proposed  
 4 Amended Complaint to Defendants with a Joint Stipulation proposing to: (1) omit all references in  
 5 the Complaint to a class action or a class; and (2) add a new cause of action for overtime  
 6 compensation under the Fair Labor Standards Act [29 U.S.C § 201 *et seq.*]. It is anticipated that  
 7 Defendants will execute the proposed Joint Stipulation with certain modifications thereto, which will  
 8 authorize the Court to grant Plaintiff leave to file and serve the proposed Amended Complaint. If so,  
 9 Defendants will file and serve an appropriate response to the Amended Complaint within twenty  
 10 (20) days from the date the Amended Complaint is deemed filed, pursuant to the terms of the Joint  
 11 Stipulation. As a condition for allowing the amendment, Plaintiff has confirmed that he does not  
 12 intend to, and will not, assert any claims on behalf of anyone other than himself either as a purported  
 13 class representative or as a representative of a collective class, or in any other manner.

14                  Except as set forth above, the parties do not anticipate adding any additional parties or  
 15 claims, or filing any amended pleadings or a motion to transfer venue at this time.

16                   **IV. DISCUSSION OF DISCOVERY PLAN AND EXPERTS**

17                  The parties propose to the Court the following discovery plan:

18                  Discovery will be needed on each of the causes of action alleged in Plaintiff's Amended  
 19 Complaint and Plaintiff's purported claim for damages, as well as with respect to affirmative  
 20 defenses alleged by Defendants to each cause of action and claim for damages by Plaintiff.

21                  The parties will meet and confer further prior to the Case Management Conference on  
 22 September 25, 2008, to discuss the documents to be exchanged and attempt to streamline discovery.

23                  The parties have tentatively agreed that all discovery shall be commenced in time to be  
 24 completed by March 20, 2009.

25                  Plaintiff and Defendants seek compliance with the current statutory limitation on the number  
 26 of interrogatories and requests for admission that may be served. However, the parties reserve their  
 27

1       respective right to seek to propound interrogatories and requests for admission in excess of the  
 2       statutory limit if warranted by unforeseen issues that arise during litigation.

3           The parties agree to a maximum of 10 depositions per party. With the exception of the  
 4       deposition of Plaintiff, the parties propose that each deposition shall be limited to a maximum of  
 5       seven (7) hours, excluding breaks and meal periods. However, the parties reserve the right, if  
 6       warranted, to conduct depositions in excess of the statutory limit if warranted by unforeseen issues  
 7       that arise during litigation.

8           Defendants anticipate that, because of the nature and number of allegations contained in  
 9       Plaintiff's Complaint and Amended Complaint, the complexity of certain claims alleged, and the fact  
 10      that there are two different Defendants represented by separate counsel who have the right to  
 11      conduct an examination of Plaintiff as to issues, claims and defenses pertaining to each such  
 12      Defendant, the deposition of Plaintiff will require a maximum of two days or fourteen (14) hours,  
 13      excluding breaks and meal periods, to complete. The parties have agreed that the deposition of  
 14      Plaintiff will take place on two (preferably consecutive) days and completed before Plaintiff  
 15      conducts any depositions, assuming Defendants act diligently to schedule Plaintiff's deposition. In  
 16      addition to Plaintiff, Defendants intend to take the deposition of Plaintiff's spouse, any other  
 17      witnesses identified by Plaintiff in his deposition, written discovery response or initial disclosures,  
 18      and other witnesses as appears appropriate in light of the evidence which comes to light in the case.

19           Plaintiff intends to take the depositions of Defendants pursuant to Federal Rule of Civil  
 20      Procedure 30(b)(6). In addition, Plaintiff anticipates deposing other percipient witnesses, including  
 21      individuals employed by Defendants.

22           Other than as specifically set forth hereinabove, the parties do not believe that discovery  
 23      needs to be conducted in phases or otherwise ordered or limited.

24           The parties do not anticipate any issues regarding the disclosure of discovery of  
 25      electronically stored information and will meet and confer about any such issues and the forms of  
 26      production, if necessary.

1 Plaintiff anticipates issues may arise regarding the marital privilege in connection with the  
 2 deposition of Plaintiff and his spouse that may require the intervention of the Court to resolve.

3                   **V.     BRIEF DESCRIPTION OF ISSUES THAT MAY BE**  
 4                   **RESOLVED BY MOTION FOR SUMMARY JUDGMENT**

5 Plaintiff and Defendants intend to file motions for summary judgment following the  
 6 completion of discovery that they believe will resolve most, if not all, claims and issues in this action  
 7 prior to trial.

8                   **VI.    EXPERT WITNESSES**

9 The parties currently do not know whether they will designate any expert witnesses, but  
 10 reserve their right to do so pending completion of discovery. The parties agree to exchange reports  
 11 from retained experts, if any, under Rule 26(a)(2).

12                   **VII.   MOTION SCHEDULE**

13 All potentially dispositive motions and any other non-trial motions should be heard by the  
 14 Court, if possible, no later than July 20, 2009. However, as previously indicated, defendants  
 15 anticipate filing dispositive motions following the completion of discovery.

16                   **VIII.   PRETRIAL**

17 Defendants request that a Pretrial Conference be scheduled no earlier than September 28,  
 18 2009, because counsel for AEROTEK will be taking a three month sabbatical leave beginning on or  
 19 about May 1, 2009 and not be returning to work until on or about August 1, 2009,. Counsel have  
 20 discussed the foregoing scheduling issues and agree that this matter will not be ready for a Pre-Trial  
 21 Conference before counsel for AEROTEK will commence his three-month sabbatical leave on or  
 22 about May 1, 2009. Accordingly, the parties believe that a Pretrial Conference in late September or  
 23 early October 2009 would be most appropriate and request the Court's approval.

24                   Final lists of witnesses and exhibits shall be filed as required pursuant to Rule 26(a)(3). The  
 25 parties shall have fourteen (14) days after service of the final lists of witnesses and exhibits to list  
 26 objections under Rule 26(a)(3).

## IX. TRIAL ESTIMATE

Counsel for Aerotek is lead counsel in another case that is currently pending before the United States District Court for the Central District of California in Santa Ana, California, in which the Pretrial Conference is scheduled for October 19, 2009, and a two to three week jury trial is currently scheduled to commence on October 27, 2009. Accordingly, and because of the holidays in November and December, and related vacation plans that may affect the availability of their witnesses and counsel, Defendants request that the Court schedule trial to commence in this action no earlier than January 19, 2010. Plaintiff prefers an earlier trial date.

Plaintiff is not aware of all potential defenses, or the number of individuals that Plaintiff and Defendants will present as witnesses. At this time, however, Plaintiff anticipates he will need five to seven days to present testimony his case. Defendant's estimate they will need five to seven days to present their defense at trial. Therefore, counsel for the parties estimate that 10-14 days will be required for trial.

## X. PROPOSED DATES

Discovery Cut-Off: March 20, 2009

## Dispositive Motion Hearing Cut-Off: July 20, 2009

Final Pre-Trial Conference: no earlier than September 21, 2009

Jury Trial: no earlier than January 19, 2010 (per Defendants' request.)

## XI. COMPLEX CASE

The parties do not believe that this is a complex case subject to the procedures of the Manual for Complex Litigation.

## **XII. SEVERANCE, BIFURCATION OR OTHER ORDERING OF PROOF**

The parties currently do not know whether it will be necessary to seek severance, bifurcation or other ordering of proof, but reserve the right to do so pending completion of discovery and the Court's disposition of Defendants' motions for summary judgment.

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**XIII. WHETHER ANY UNUSUAL LEGAL ISSUES ARE PRESENTED BY THE CASE**

The Parties assert that the issue of whether the automobile policy of Defendant AEROTEK is actionable and violates California law constitutes an unusual legal issue presented in this case.

Dated: September 9, 2008

**POPE, BERGER & WILLIAMS, LLC**

By: \_\_\_\_\_ /s/ Harvey C. Berger  
Harvey C. Berger

Atorneys for Plaintiff  
**BRIAN HOUGH**

Dated: September 9, 2008

LITTLER MENDELSON  
A Professional Corporation

By: \_\_\_\_\_ /s/ Van A. Goodwin  
Van A. Goodwin

Attorneys for Defendant  
AEROTEK, INC.

Dated: September 9, 2008

BINGHAM MCCUTCHEN LLP

By: /s/ Wendy M. Lazerson  
Wendy M. Lazerson

Attorneys for Defendant  
GENERAL MOTORS CORPORATION

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**PROOF OF SERVICE BY COURT CM/ECF SYSTEM**

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I am employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 501 W. Broadway, Suite 900, San Diego, California 92101-3577.

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On September 10, 2008, I caused the following documents:

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**1. JOINT RULE 26(f) REPORT**

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to be electronically filed with the Clerk of the Court through the Court's CM/ECF system. It is my understanding that the CM/ECF system will automatically send a "Notice of Electronic Filing" to the registered users in the case and that the "Notice of Electronic Filing" will constitute service of the above-listed document(s) on the following:

13

Mr. Harvey C. Berger, Esq.  
Pope, Berger & Williams  
550 West C Street, Suite 1400  
San Diego, CA 92101-3545  
Phone: (619) 595-1366  
Fax: (619) 236-9677

[berger@popeberger.com](mailto:berger@popeberger.com)

14

Wendy M. Lazerson  
Bingham McCutchen LLP  
1900 University Avenue, 4th Floor  
East Palo Alto, CA 94303-2223  
Phone: (650) 849-4840  
Fax: (650) 849-4800

[wendy.lazerson@bingham.com](mailto:wendy.lazerson@bingham.com)

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Attorneys for Plaintiff  
BRIAN HOUGH

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Attorneys for Defendant  
GENERAL MOTORS  
CORPORATION

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

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Executed on September 10, 2008, at San Diego, California.

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Loriann Christy